

STATEMENT OF EMERGENCY

907 KAR 1:008E

(1) This emergency administrative regulation is being promulgated to establish the use of criteria by the Department for Medicaid Services to determine the clinical appropriateness of any given care.

(2) This action must be taken on an emergency basis to ensure the viability of the Medicaid program and to ensure the appropriateness of care provided to Medicaid recipients.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation except that the emergency regulation explicitly states August 1, 2006 as the effective date. The effective date is inappropriate for the ordinary administrative regulation given that it will not be adopted by August 1, 2006.

Ernie Fletcher
Governor

Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Hospital and Provider Operations

4 (Emergency Amendment)

5 907 KAR 1:008E. Ambulatory surgical center services and reimbursement.

6 RELATES TO: KRS 205.520(3), 205.560(2), 42 CFR 447.271, 447.53

7 STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3)[, ~~EO 2004-~~
8 ~~726~~]

9 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004,~~
10 ~~reorganized the Cabinet for Health Services and placed the Department for Medicaid Ser-~~
11 ~~vices and the Medicaid Program under the Cabinet for Health and Family Services.]The~~
12 Cabinet for Health and Family Services has responsibility to administer the Medicaid Pro-
13 gram. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with
14 a requirement that may be imposed or opportunity presented by federal law for the provi-
15 sion of medical assistance to Kentucky's indigent citizenry. This administrative regulation
16 establishes the coverage provisions and method for establishing payment for an ambula-
17 tory surgical center.

18 Section 1. Definitions.

19 (1) "Department" means the Department for Medicaid Services or its designee.

20 (2) "Emergency" means that a condition or situation requires an emergency service
21 pursuant to 42 CFR 447.53.

(3) "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(4) "Non-emergency" means that a condition does not require an emergency service pursuant to 42 CFR 447.53.

Section 2. Coverage Criteria.

(1) For a service to be covered in a participating ambulatory surgical center:

(a) The center shall be licensed and certified for Medicare participation; and

(b) An outpatient surgery shall be:

1. Prior authorized;

2. Medically necessary; and

3. Effective August 1, 2006, clinically appropriate pursuant to the criteria established in 907 KAR 3:130.

(2) The requirements established in subsection (1) of this section shall not apply to an emergency service.

Section 3. ~~[Scope of Coverage. The Medicaid Program shall cover medically necessary, medically appropriate services rendered by a participating ambulatory surgical center licensed by its respective state and certified for Medicare participation.~~

~~Section 2.] Basis for Reimbursement. (1) The department [for Medicaid Services]~~ shall utilize the 2006 ~~[1996]~~ Medicare ambulatory surgical center group rates for the federal Cincinnati, Ohio - Kentucky region to reimburse for an ambulatory surgical center service. The following chart establishes the ambulatory surgical center reimbursement rate for each corresponding surgical group:

Ambulatory Surgical Center Group	Reimbursement Rate
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Group 1	\$307.38
Group 2	\$412.79
Group 3	\$471.90
Group 4	\$582.25
Group 5	\$664.02
Group 6	\$775.59
Group 7	\$921.15
Group 8	\$911.55

(2) Reimbursement for a procedure shall be the surgical group rate specific to that procedure as assigned by the Centers for Medicare and Medicaid Services.

(3) Reimbursement for a procedure that ~~[which]~~ does not have a surgical group rate shall be forty-five (45) percent of charges.

(4) Ambulatory surgical center group surgical and covered provisions are established in the Ambulatory Surgical Centers Manual.

Section 4 [3]. Incorporation by Reference. (1) "The Ambulatory Surgical Centers Manual", July 2006 [~~October 2002~~] edition, Department for Medicaid Services, is incorporated by reference.

(2) This material [~~It~~] may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

907 KAR 1:008E

REVIEWED:

Date

J. Thomas Badgett, MD, PhD, Acting Commissioner
Department for Medicaid Services

Date

Mike Burnside, Undersecretary
Administrative and Fiscal Affairs

APPROVED:

Date

Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:008E

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Stuart Owen or Stephanie Brammer-Barnes (502-564-6204)

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the reimbursement rates and coverage provisions for procedures performed in ambulatory surgical centers.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement rates and coverage provisions for procedures performed in ambulatory surgical centers.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement rates and coverage provisions for ambulatory surgical centers as authorized by KRS 194A.030(3), 194A.050(1), and 205.560(2).
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the reimbursement rates and coverage provisions for ambulatory surgical centers.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This amendment establishes the use of criteria by the Department to determine the clinical appropriateness of care provided in ambulatory surgical centers.
 - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the clinical criteria established by 907 KAR 3:130.
 - (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing the use of criteria by the Department to determine the clinical appropriateness of care provided in ambulatory surgical centers.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by establishing the use of criteria by the Department to determine the clinical appropriateness of care provided in ambulatory surgical centers.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This amendment will affect all ambulatory surgical centers that are reimbursed by the Department.

- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To receive reimbursement, this amendment will require ambulatory surgical centers to provide services that meet the clinical criteria established in 907 KAR 3:130.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: No additional expenditures are necessary to implement this amendment.
 - (b) On a continuing basis: No additional expenditures are necessary to implement this amendment.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 1:008E. Ambulatory surgical center services and reimbursement

Summary of Material Incorporated by Reference

The “Ambulatory Surgical Centers Manual”, October 2002 edition is being revised to the July 2006 edition. Section IV, Page 4.2 is amended to require all outpatient surgery procedures to be prior authorized, medically necessary, and clinically appropriate pursuant to the criteria established in 907 KAR 3:130. Appendix A is being removed because all outpatient surgery procedures, not just the procedures identified in Appendix A, are now subject to prior authorization. The manual contains forty-one (41) pages.